



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

KENNETH BARBOUR,  
Plaintiff,

vs.

GREENVILLE CORRECTIONAL CENTER  
et al.,

Defendants.

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CIVIL ACTION NO. 9:10-2822-HFF-BM

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ORDER

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This case was filed as a civil rights action. Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the above-captioned case be dismissed without prejudice and without issuance and service of process. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on January 7, 2011, and the Clerk of Court entered Plaintiff's objections and motion to amend on January 24, 2011. The Court has reviewed the objections, but finds them to be without merit. Therefore the Court will enter judgment accordingly.

In both the objections and in a separate motion, Plaintiff seeks to amend his Complaint, dismissing all previously named defendants and adding as the "sole parties . . . [the] United States Presidents in their OFFICIAL Constitutional Capacity. . . ." (Motion to Amend 1.) The Court will grant the motion. It is black letter law, however, that a *Bivens* action can be maintained against a defendant in his or her individual capacity only, and not in his or her official capacity. Thus, in that Plaintiff is suing the United States Presidents in their official capacities, Plaintiff's claims will be dismissed.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Plaintiff's objections, adopts the Report, and incorporates it herein. Therefore, it is the judgment of the Court that the above-captioned case is **DISMISSED** without prejudice and without issuance and service of process.

Moreover, as set forth above, Plaintiff's motion to amend is **GRANTED**, but the claims against the Presidents of the United States, past, present and future, are **DISMISSED** without prejudice and without issuance and service of process.

**IT IS SO ORDERED.**

Signed this 2nd day of February, 2011, in Spartanburg, South Carolina.

s/ Henry F. Floyd  
HENRY F. FLOYD  
UNITED STATES DISTRICT JUDGE

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#### **NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this Order within sixty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.